

**WETLANDS COUNCIL**  
**MINUTES**  
**SEPTEMBER 23, 2003**

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The Wetlands Council met on Tuesday, September 23, 2003 at the  
Department of Environmental Services, 29 Hazen Dr., Concord, NH

**Attendees:**

Council Members: Brian Fowler, Thomas Chrisenton, John Cobb, Mike Dannehy,  
and Lawrence Morse  
Designees: Sharon Champagne, William Ingham Jr., Ted Diers, E. William Roy  
and Thomas Sloan

**Absentees:** Camilla Lockwood, Glenn Normandeau, and JB Cullen

The meeting was called to order by Chairman Brian Fowler at 9:05 a.m.

**Introduction**

Chairman Fowler welcomed Lawrence E. Morse to the Wetlands Council. Mr. Morse was recently appointed by Governor Benson to represent the NH Association of Natural Resource Scientists on the Council.

**1. Approval of Minutes of June 24, 2003 Meeting**

***A motion was made by Mr. Ingham, seconded by Mr. Cobb and unanimously voted to accept the minutes of June 24, 2003 as presented.***

**4. Other Business**

- Mr. Fowler distributed copies of the recent Supreme Court decision in Conservation Law Foundation v. New Hampshire Wetlands Council for review by the Councilors. This matter will be put on the agenda for discussion at a future Council meeting.
- Election of Chairman

***A motion was made by Mr. Diers to re-elect Brian K. Fowler as Council Chairman for the ensuing year. Mr. Sloan seconded the motion and it was unanimously voted.***

**3. Wetlands Bureau Update**

- Collis Adams, Wetlands Bureau Administrator, updated the Council on the status of the permit-by-notification rulemaking process. A public hearing was held with the Joint Legislative Committee on Administrative Rules on September 18, 2003. Minor editorial changes will be made to the proposed rules as a result of the comments received. JLCAR will meet again on October 6, at which time it is expected the rules will be approved.

- Another major rulemaking effort addresses proposed mitigation rules. A public hearing was held at which numerous comments were received. The Bureau is in the process of assimilating the comments and incorporating them into a revised proposal. Mr. Adams will submit copies of the revised proposed rules to the Council when available.
- Chairman Fowler advised the Councilors that a pre-hearing conference on the non-adjudicatory appeal by the Governor's Island Club was held to address the longstanding erosion and deposition issues on the northeast shore of Governor's Island. He asked Mr. Adams to update the Council on the status of the discussions.

Mr. Adams stated that he met onsite with representatives from the Corps of Engineers, Governor's Island Club and Ms. Chaput. The author of the report which was prepared on erosion and deposition patterns was not present at the meeting so many questions remain unanswered. After discussion concerning the long-range and ongoing nature of the repairs and/or replacement of structures, it was decided that separate permits should be issued to the parties incorporating provisions for routine and periodic maintenance.

In response to Councilors' concerns, Mr. Adams indicated that there would be cross-wording in the permits to ensure that permitted activities would not be detrimental to other properties. Also, the eventual objective would be to develop a long-range plan for management of this site.

## **5. Next Meeting**

The next meeting will be tentatively scheduled for October 28, 2003.

## **2. Status of Appeals**

Michael Sclafani, Appeals Clerk, distributed a report and reviewed the status of appeals with the Council members.

- Docket No. 02-13 WtC, WB#2002-00348 – John P. and Carole Hoag *et al.*, Appeal  
This appeal is scheduled for hearing today at 10:00 a.m. Two pending motions filed by CLF will be addressed at the hearing: (1) Motion for Admission of Exhibit; and (2) Motion for Admission of Prior Wetlands Bureau Rulings on Jurisdiction Issues.
- Docket No. 02-15 WtC - Conservation Law Foundation: WB #2000-00131 NHDOT, Troy Bypass  
A written Decision and Order to Deny Appeal was issued on July 2, 2003. On July 22, 2003 a Motion for Reconsideration was filed by Attorney Irwin on behalf of CLF. An Objection to the Motion for Reconsideration was filed by Attorney Marshall on behalf of DOT on July 28, 2003. A vote will be taken on the pending Motion for Reconsideration today at the conclusion of the appeals update.

- Docket No. 02-16 WtC - Donald S. Thompson: WB #2002-01019  
A stay is in effect on this appeal. Mr. Sclafani was advised that an updated report will be available by the Council's next meeting.
- Docket No. 03-02 WtC – Philip and Judith Mills: WB #2002-00922  
A stay continues in effect on this appeal.
- Docket No. 03-03 WtC – Joseph J. Smith: WB #2001-00787  
No new information has been received on this appeal.
- Docket No. 03-04 WtC – Aqua Terrace Condominium Assn: WB #2002-00866  
A pre-hearing conference was held on July 8, 2003 and a pre-hearing order issued on July 10. This appeal is scheduled for hearing before the Council on October 28, 2003 at 10:00 a.m.
- Docket No. 03-08 WtC – Marianna and Gene Cayten: WB #2002-01912  
This appeal was filed on June 25, 2003. An electronic vote of the Councilors was conducted, and on July 21, 2003 the appeal was accepted. A pre-hearing conference was held on September 9, 2003. At the request of the parties, the pre-hearing conference will reconvene on October 14 and an appeal hearing will be scheduled.
- Docket No. 03-11 WtC – Town of Barrington – Application of USA Springs for a Large Groundwater Withdrawal Permit  
An appeal was filed by the Town of Barrington on August 20, 2003. On September 2, 2003 an Appearance and Statement of Position was filed by Attorney Tupper Kinder on behalf of the Town of Nottingham. On September 3, 2003, an Appearance and Motion to Stay was filed by Attorney Richard Head on behalf of DES. Attorney Greg Smith filed a Response to Petition for Appeal and a Motion to Dismiss on behalf of USA Springs on September 4 and an Appearance on September 8, 2003. On September 10, a Decision & Order was issued granting DES's Motion to Stay. Attorney Beliveau on behalf of the Town of Barrington subsequently filed a Motion to Vacate the Decision & Order, an Objection to the Motion to Stay Appeal and an Objection to the Motion to Dismiss on September 15, 2003.

This appeal concerns the application by USA Springs for a water bottling operation in Barrington and involves several jurisdictional issues. The issue before the Wetlands Council concerns the impact that dewatering would have on prime wetlands straddling the Towns of Barrington and Nottingham if a permit were granted and a bottling plant opened. The Towns have interpreted the word "removal" in dredge and fill legislation to apply to water as well as earthen materials.

The Water Supply Engineering Bureau (WSEB) has jurisdiction over groundwater withdrawal permits. USA Springs' request for a permit was denied and a request for reconsideration of the denial was filed with WSEB. If the request for reconsideration is denied, then an appeal would go to the Supreme Court.

Also, an appeal has been filed with the Supreme Court to determine whether an appeal is within the jurisdiction of the Wetlands Council or the Water Council. The court has not ruled on the appeal.

A further appeal has been filed with the Water Council for denial of USA Springs' application for approval of a bottled water source under Env-Ws 389, which is contingent on USA Springs obtaining a large groundwater withdrawal permit.

- Docket No. 03-13 WtC – Town of Salem Conservation Commission: WB #2002-02397

A Petition for Appeal was filed on 9/15/03. The original submission did not include copies of the appeal for distribution to the Councilors; subsequently on 9/22/03 copies of the appeal were delivered to the Appeals Clerk for distribution. The petition was timely filed and appears to be in conformance with the rules.

***Mr. Ingham made a motion to accept the appeal. Ms. Champagne seconded the motion and it was unanimously voted.***

The Council revisited appeal 02-15 WtC for a vote on the pending Motion for Reconsideration.

- Docket No. 02-15 WtC - Conservation Law Foundation: WB #2000-00131 NHDOT, Troy Bypass

***Mr. Dannehy moved to deny the motion for reconsideration and Mr. Chrisenton seconded the motion. It was unanimously voted with Chairman Fowler casting his vote with the Councilors. There were three abstentions: Councilors Ingham, Morse and Diers.***

## **6. Adjournment**

***Mr. Diers made a motion to adjourn. The motion was seconded by Mr. Sloan and was unanimously voted.***

The meeting adjourned at approximately 10:05 a.m.